

Claim 15 has been presented with deletions to the claim in brackets, in accordance with 37 C.F.R. 1.121(b).

Claim 17 has been presented with additions to the claim underlined, and deletions bracketed, in accordance with 37 C.F.R. 1.121(b). The examiner pointed out that the word "where" at line 11 was changed to "wherein" in an amendment filed September 30, 1999, without the proper bracketing and underlining. Similarly, at line 16, the word "diradical" was changed to "radical" without the proper notations. These changes were inadvertent. The correct text is presented above.

Claims 183, 215, 245, 278, 321, 354, 385, and 419 have been amended, as suggested by the examiner, to recite a lower limit of 50 mg/ml, instead of a lower limit of 5 mg/ml.

Claims 37, 71, 103, 138, 180, 212, 242, 275, 318, 351, 382, and 416 have been amended to recite "diradical" instead of "radical" to provide proper antecedent basis.

Claims 194, 290, 332, and 431 have been amended to recite "a pulmonary system" instead of "the pulmonary system."

Claims 268-270 and 409-411 have been amended to correct the dependency of these claims.

Claims 163, 195, 225, and 258 are presented without bracketing and underlining, as these are new claims added during prosecution of the reissue application.

Claims 180, 212, 242, 275, 318, 351, 382, and 416 have been amended such that correct Markush terminology is used. In each of these claims, an "and" has been deleted and an "or" has been replaced with "and."

Claims 37-41, 43, 44, 71-75, 77, 78, 103-107, 109, 110, 138-142, 144, 145, 180-184, 186, 187, 194, 212-216, 218, 219, 242-246, 248, 249, 268-270, 275-279, 281, 282, 290, 318-322, 324, 325, 332, 351-355, 357, 358, 382-386, 388, 389, 409-411, 416-420, 422, 423, and 431 were rejected under 35 U.S.C. 112 and/or 35 U.S.C. 251 or 37 C.F.R. 1.75(c) in view of typographical errors or informalities. In view of the claim amendments presented above, these rejections may be withdrawn.

Claims 1-17 and 163-299 are now in condition for allowance.

The remaining claims, claims 18-162 and 300-440, stand rejected under the recapture rule. A comparison of allowed claim 163 to rejected claim 310 is instructive. For convenience, claims 163, 300 (upon which claim 310 depends), and 310 are shown below:

163. A method of treating tissue to prevent or control air or fluid leaks comprising:

providing a composition to tissue, said composition including a serum albumin protein at about 20-60 wt/vol % and a crosslinking agent at about 50-800 mg/ml, said crosslinking agent having a polyoxyethylene chain portion and an activated leaving group which allows the crosslinking agent to react with said protein and having a molecular weight in a range of about 1,000-15,000; and
curing said composition on the tissue to bond said composition to the tissue and to provide a substantive cured matrix that has a burst strength greater than about 10 mm Hg.

300. A method of treating tissue to prevent or control air or fluid leaks comprising:

providing a composition to tissue, said composition including an albumin protein at about 20-60 wt/vol% and a crosslinking agent at about 50-800 mg/ml, said crosslinking agent having a polyoxyethylene chain portion and an activated leaving group which allows the crosslinking agent to react with said protein and having a molecular weight of about 1000-15,000; and
curing said composition on the tissue to bond said composition to the tissue and to provide a substantive cured matrix.

310. The method of claim 300 comprising curing said composition to provide a cured matrix that has a burst pressure greater than about 10 mmHg.

The language of the claims differs in that allowed claim 163 recites the protein as "serum albumin protein" while rejected claim 310 recites "albumin protein."

During the original prosecution, independent composition claims were added to include the limitation to "serum albumin protein" and a dependent claim reciting this feature was cancelled.

The rejection reasons that this estops any broadening related to "serum albumin protein" under the recapture rule. The rejection distinguishes In re Richman as follows:

Richman is also distinguishable from the instant application in that in Richman, each of the appealed reissue claims was more restrictive in at least one significant respect than the canceled claims (see page 276, column 1, second full paragraph).

This analysis confuses claim cancellation with subject matter surrender. The result appears to be that the rejection compares the scope of the original dependent claim with the scope of the reissue claim to determine surrender with respect to the protein limitation. But this is improper.

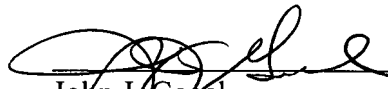
The subject matter of the dependent claims was not in any way cancelled. The reissue claims are, for at least this reason, narrower than the original independent claims that were amended, just as in Richman. Moreover, the limitation to "albumin protein," as discussed previously, is material to the original prior art rejection in the parent application.

At least for this reason, the recapture rule rejection should be withdrawn and the claims should be allowed.

Enclosed is a \$890.00 check for the Petition for Extension of Time fee. Please apply any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: 01/28/01


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